

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

RONALD WATSON,	.	Case No. 2:17-cv-01049-MMB
	.	
Plaintiff,	.	
	.	
v.	.	U.S. Courthouse
	.	601 Market Street
	.	Philadelphia, PA 19106
LLOYD INDUSTRIES, INC.,	.	
	.	
Defendant.	.	
	.	
	.	November 14, 2018
.	9:26 a.m.

TRIAL (DAY 2)
BEFORE HONORABLE MICHAEL M. BAYLSON
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

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NONE		

1 (Call to Order of the Court.)

2 JUDGE MICHAEL M. BAYLSON: Okay. Good morning.

3 THE PARTIES: Good morning, Your Honor.

4 THE COURT: Okay. All right. We've gone over the
5 joint suggestions for the charge that you submitted and I find
6 that they timely agreeable; however, I think there was no
7 mention of a duty to mitigate, which is in the standard Third
8 Circuit charge.

9 Please be seated.

10 So I'm going to add a paragraph about that. As I
11 understand the claim on the back -- there's no -- there's no
12 claim for front pay in this case; is that right, Mr. Dion?

13 MR. SAMUEL A. DION: Correct, Your Honor.

14 THE COURT: All right. So --

15 MR. DION: That's right.

16 THE COURT: -- I have a separate charge on back
17 pay --

18 MR. DION: Okay.

19 THE COURT: -- that, you know, I put in here, I
20 thought it was the date of the verdict, but your verdict form,
21 it says through April 9th, 2018. Is that agreeable to both of
22 the -- that's the day Mr. Watson got another job?

23 MR. DION: Correct, Your Honor.

24 MR. KEITH COHEN: That's his testimony, Your Honor.
25 That's his testimony.

1 THE COURT: That's agreed?

2 MR. COHEN: As of April 8th, 2018 was when he got a
3 job, but --

4 THE COURT: All right.

5 MR. COHEN: -- there is testimony, which is a little
6 bit confusing, that he worked part time during that time frame
7 and that he earned \$3500.

8 THE COURT: Right. Well, I have -- I submit I say
9 here, you must reduce anywhere by the amount of expenses that
10 Mr. Watson would have incurred in making those earnings. I'm
11 not sure there's any evidence about that. But then I also say
12 in -- if you word that, that you're instructed to deduct from
13 back pay, whatever wages Mr. Watson has obtained from other
14 employment during this period, but what you're saying is that
15 he -- it's agreed that he didn't have any other employment from
16 the date he was terminated, which was October 29th, 2015, until
17 April 8th, 2018. Is that agreed?

18 MR. COHEN: That is not agreed, Your Honor. That's
19 not the evidence in the case. In fact, he testified that he
20 worked for various job placement companies --

21 THE COURT: Okay.

22 MR. COHEN: -- for a period of time.

23 THE COURT: All right. All right. So --

24 MR. COHEN: But he was not --

25 MR. DION: Those are temp jobs.

1 THE COURT: So you would agree with that -- that
2 paragraph, that sentence I just read, that the jury should make
3 a deduction from what he earned from other employment during
4 that period?

5 MR. DION: Right.

6 MR. COHEN: That is correct.

7 THE COURT: What's the --

8 MR. DION: Do you agree that they were temp jobs?

9 MR. COHEN: I agree that they were temp jobs, but
10 they --

11 MR. DION: Right.

12 MR. COHEN: -- were still jobs, so he --

13 THE COURT: Yeah. Well, okay.

14 MR. COHEN: -- had employment.

15 MR. DION: Right. So you don't get --

16 THE COURT: Well, I think I have to charge that --

17 MR. DION: -- cut off the damages.

18 THE COURT: -- way. Now, how the jury deals with
19 that is up to them.

20 MR. DION: Okay.

21 MR. COHEN: Correct.

22 THE COURT: All right.

23 MR. DION: Well, you can't --

24 MR. COHEN: It's up to the jury.

25 MR. DION: -- get cut off for damages on a temp job,

1 only on a permanent job, Your Honor. So --

2 THE COURT: Well, if you -- whatever he earned, the
3 jury is entitled -- the jury should deduct that from the back
4 pay figure.

5 MR. DION: Right. Understood.

6 THE COURT: Do you agree?

7 MR. DION: Yes.

8 THE COURT: All right. Okay. All right. So I have
9 the back pay, so I'll -- and the verdict form will show October
10 29, 2015, through April 9th, 2018, okay?

11 MR. COHEN: Yes, Your Honor.

12 MR. DION: Yes, Your Honor.

13 THE COURT: All right. All right. And -- all right.
14 Otherwise, I -- I'm generally going to follow the charge that
15 you did, which is the Third Circuit model charge. Okay.

16 MR. DION: Are you going to be giving the other
17 smaller charges on preponderance of the evidence, things like
18 that, Your Honor?

19 THE COURT: On what?

20 MR. DION: Charges on preponderance of the evidence
21 and things like that?

22 THE COURT: Yeah. Oh, yeah, I'm going to say --

23 MR. DION: Okay.

24 THE COURT: -- preponderance of the evidence and --

25 MR. DION: Okay.

1 THE COURT: -- I mean, I'll include all the standard
2 charges.

3 MR. DION: Okay.

4 THE COURT: And if you have any exceptions, you can
5 -- when I'm done, I will ask you if you have any exceptions and
6 then you can come in -- yeah, charge on preponderance of the
7 evidence. And --

8 MR. COHEN: Credibility of witnesses, things of that
9 nature, the --

10 THE COURT: And then -- just one second.

11 All right. I'm also going to charge on nominal
12 damages, unless the plaintiff doesn't want me to.

13 MR. DION: I don't think it's necessary here, Your
14 Honor. You can take that out.

15 THE COURT: So I --

16 MR. DION: As much as I would like to get attorney's
17 fees --

18 THE COURT: What?

19 MR. DION: -- get an award of damages, but I don't
20 think it's a good idea.

21 MR. COHEN: Well, if they give you all the damages,
22 you would get 33 cents. No, I'm kidding.

23 THE COURT: Okay. Anything else?

24 MR. COHEN: You're going to give -- you'll give the
25 standard charge with reference to credibility of witnesses --

1 THE COURT: Yes.

2 MR. COHEN: -- all that?

3 THE COURT: Yes.

4 MR. COHEN: Okay. We don't need to go through that?

5 THE COURT: Yep, credit -- yes.

6 MR. COHEN: That's fine. Yeah.

7 THE COURT: Credibility, what is not evidence, things
8 like that.

9 MR. COHEN: Correct. Thank you.

10 THE COURT: Okay.

11 MR. COHEN: Yeah, we're good.

12 THE COURT: All right. Okay. All right. Are you
13 ready for the closings?

14 MR. DION: Yes. How does the verdict sheet look,
15 Your Honor? Is that --

16 THE COURT: It looks fine. I'm going to use it --

17 MR. DION: Okay.

18 THE COURT: -- just like this.

19 MR. DION: Okay, great.

20 THE COURT: And I'll explain it to the jury after I
21 charge, okay?

22 MR. DION: Yes, Your Honor.

23 MR. COHEN: Thank you, Your Honor.

24 THE COURT: All right. All right. Well, I'm
25 prepared to have the jury come in. Well, I'll be back in --

1 just give me 60 seconds and I'll be right back, okay?

2 MR. DION: Okay.

3 MR. COHEN: Sure.

4 THE COURT: All right. And then we'll bring the jury
5 in. Thank you.

6 (Court in recess from 9:31 a.m. until 9:35 a.m.)

7 (Jury enters the courtroom.)

8 THE COURT: Okay. Be seated, please. All right.

9 Ladies and gentlemen of the jury, good morning. You're -- just
10 going to say one word about the closing arguments. These are a
11 very important part of the case. As opposed to the openings,
12 which were just as a sort of roadmap, this is the opportunity
13 for the lawyers to present their arguments as to why you should
14 -- your verdict should be in favor of their client. So give
15 them close attention.

16 Lawyers are -- will argue the facts and will explain
17 the law, but you're the judges of the facts, as I will tell you
18 in more detail. And I'm sure they will do their best to recall
19 the facts as they represented by the witnesses, but it's your
20 recollection and your decision about the facts.

21 When it comes to the law, I will give you
22 instructions on the law immediately following the arguments and
23 you have to follow the instructions on the law. But the
24 instruct -- but the lawyers, I'm sure, will do their best to be
25 accurate about both.

1 Now, the plaintiff, as I will tell you, has the
2 burden of proof. For that reason, Mr. Dion, counsel for the
3 plaintiff, he gets both an opening and a closing argument. He
4 gets to open, that's what he's about to do now, then Mr. Cohen
5 will present his argument, and then Mr. Dion is allowed to make
6 a reply argument, last argument. Following of which, if you
7 need a break, we'll take a break and then I'll give you the
8 charge, which will take about 30 minutes.

9 And so, we'll -- we're ready. Mr. Dion -- Mister --
10 each attorney has a total of 30 minutes, if they want to use
11 that much. That's up to them.

12 All right. Go ahead.

13 CLOSING ARGUMENT

14 MR. DION: Thanks, Your Honor.

15 Good morning, jurors. Again, I told you yesterday
16 that we would show that the three African-American or black
17 employees were let go within a four-day period. We proved
18 that. It was indisputable. Mr. Lloyd admitted that. We --
19 showing Exhibit P-8, the three African-American employees were
20 fired on October 26th, October 29th, and October 30th. And I
21 say fired for Mr. Mathis because, as he testified, he said he
22 was forced to resign based on a cut in his hours, which is
23 tantamount to a termination. Also, there was a termination
24 letter sent to him saying that he was terminated as of October
25 26th, 2015.

1 So this type of evidence, where we have three -- the
2 only three African-American or black employees out of 60 or 65
3 people is what we refer to as statistical evidence. The Judge
4 will instruct on statistical evidence and the use of
5 statistical evidence in your consideration. And part of the --
6 part of the charge to the jury is that you -- you should
7 evaluate statistical evidence along with all other evidence.

8 In this case, the statistical evidence is quite
9 compelling. Only five percent of the employees at Lloyd
10 Industries were African-American or black. And once the
11 company, I use the term loosely, that they white washed the
12 plant, then nothing has really improved since then, as you
13 heard from the testimony.

14 All this talk about the -- the Florida plant having
15 80 percent African-American employees, I think you heard the
16 testimony yesterday that there's really no truth to that. And
17 Mr. Lloyd himself spends three weeks down in Florida and he
18 doesn't even select the employees down there. And a lot of
19 them come from a work-release program from prison. So he
20 doesn't really have a hand in selecting these employees.

21 Now -- but we don't really need to hang our hat on
22 statistical evidence here. We do not have to show direct
23 evidence of discrimination in this case. Our evidence is based
24 on the testimony and inferences that can be made from that
25 testimony and other evidence. So the proffered legitimate

1 reason for termination in this case is low in production,
2 layoff. We have -- and then we can show many reasons why that
3 proffered reason was false and we have established that in the
4 testimony. We showed Mr. Watson, in fact, was not the lowest
5 in seniority. We showed that Mr. Watson could do assembly
6 work, and we showed that Mr. Lloyd could not explain why Mr.
7 Watson -- why he felt Mr. Watson couldn't do assembly work.

8 And let me just go over those three items
9 line-by-line so we can get into the testimony a little further.
10 So Exhibit 20 shows that five employees were hired after Mr.
11 Watson; Nguyen Cam, Tam Van Huynh, Steve Malloy, Dulup
12 Patteran, and Mike Tran. Now, I leave out Mr. Mathis, since he
13 was let go before the decision-making, but he was also hired
14 after. Four of these people did assembly work. Why you would
15 hire a guy Steve Malloy, a white guy, and not think he's got to
16 be the first to go, I don't know, but we definitely showed he
17 was not lowest in seniority -- that Mr. Watson was not lowest
18 in seniority by any stretch of the imagination. Mr. Watson
19 could do the assembly work. Steve Malloy was an assembler,
20 Nguyen Cam, Tam Huynh, all these people were assemblers. He
21 could have taken that work.

22 Under the union contract, collected bargaining
23 agreement, the policy was that Mister -- I'm sorry, if there --
24 in the event of a layoff or a low in production, the person
25 with the lowest seniority has to go, assuming that someone else

1 can do their job. You don't go to the person with higher
2 seniority and don't even offer them the chance at another job.

3 Now -- so let's go to Mr. Lloyd. His testimony was
4 pretty interesting. I'm sure you're going to remember this.
5 So we asked him, could Mr. Watson work as an assembler? His
6 response to that was, no, he can't because he's a punch press
7 operator. So then I asked him, so you're saying all Mr. Watson
8 can be is a punch press operator? And with a smirk on his
9 face, he answered yes. The -- it's almost like he's making a
10 mockery of the whole thing and it's -- it just rings untruthful
11 here.

12 You heard the testimony of Mr. Shaun Mathis, a very
13 credible witness. I felt he was -- he was -- he was humble and
14 he -- you know, he admitted, yeah, I was late a couple times.
15 It was my fault. If you noticed, he was kind of resistant to
16 even saying that there was a racial component there, but then
17 when -- when push came to shove, it spilled out. And this is
18 the type of evidence that you really need to think about
19 because, like I said, we don't have to produce evidence of
20 direct discrimination -- direct evidence of discrimination.
21 It's very rare that somebody is going to say, well, you're
22 fired because you're black. That's not -- it's just not going
23 to happen. We wouldn't be here today if that happened because
24 then the case would, obviously, have to settle. No one is
25 going to court and -- with a direct compelling evidence like

1 that.

2 So we have to look at things like that. We had to
3 get inside the person's head. And one way we get into their
4 head is to show, are they being untruthful about the -- their
5 reason that they're given for termination. If they're being
6 untruthful about that, what are they trying to hide? Then we
7 look at the statistical evidence, put it together.

8 So Mr. Lloyd, he had no good explanation for why Mr.
9 Watson couldn't do assembly work. I even said, well, all this
10 is, is you put two -- two components together, right? And he
11 said yes. You heard Mr. Mathis and Mr. Watson explain how easy
12 assembly work is. So Mr. Mathis said basic labor could do that
13 job and could be performed by anyone. And Mr. Watson said,
14 even a mentally challenged person could do it. Needless to
15 say, it's a very simple job. And I think that we definitely
16 proved that he could do assembly work. And this -- let's put
17 it this way, the statements of the simplicity of the assembly
18 work were completely unchallenged by the Defendant. There was
19 no cross-examination, no one was saying like, oh, this is very
20 complicated. We had to do this, this, this, and this. It was
21 completely unchallenged. So I'm confident that no one can come
22 out of this trial and believe that Mr. Watson couldn't do
23 assembly work.

24 So now we have to look at, well, there were these
25 shifting reasons that they had to come out. When they were

1 backed against the wall, the witnesses, they started saying,
2 well, this guy was the worst employee on Earth. He -- he came
3 in drunk every day. He -- his attendance was lousy. He was --
4 he was slow. He walked away from his work area. It's funny,
5 because you -- when you think about all three of these men,
6 there were similar things said about them, but -- so let's look
7 a little bit further into that.

8 Mr. Lloyd, he was here testifying and he was taking
9 the position that Mr. Watson was fired because he was the
10 lowest in seniority and couldn't do the -- the job. Then I
11 reminded, at his deposition, he said these things about Mr.
12 Watson was drunk all the time, and all this. And then he
13 started really seizing on that and trying to give those as the
14 reason.

15 So let's -- let's talk about the drinking on the job.
16 This is a factory with heavy machinery and to think that this
17 man would -- he testified that he knew about this supposed
18 drinking problem nearly the whole time Mr. Watson was employed
19 there. Are you, as owner of the business, going to allow a
20 person to work heavy machinery as a danger to himself or
21 others? There's -- it's just unfathomable. But he gave -- he
22 said that he would come back from lunch with the smell of
23 alcohol on his breath. They had no proof that he even left the
24 premises. If they -- we had the clock-out sheets. They were
25 evidence in the case. Unfortunately, no one actively put them

1 out there, but believe me, if there was a shred of evidence
2 that he left the premises, they could have just showed the
3 clock-out sheets when they clock out every day.

4 And you saw Mr. Lloyd's face when I said, well,
5 doesn't he have to clock out? And he said yeah. You know, and
6 it was just not -- this never happened. You heard Zenetta's
7 testimony. He does not have a drinking problem. He doesn't
8 come home from work smelling of alcohol. I know he's a --
9 she's his wife of 40 years, but there's balance on both sides.

10 And, now, another thing is, there were no write-ups,
11 so if Mr. Watson, in fact, had attendance problems or -- or any
12 other performance problems, they should be documented with
13 write-ups. This is very important for an employer because they
14 had to make a paper trail if they want to fire a person for --
15 for poor performance or attendance. You heard Shaun Mathis
16 testify that he was actually written up one time for
17 attendance.

18 And then you heard the bombshell, Mr. Lloyd claimed
19 that they didn't do any write-ups in 15 years because the
20 employees will sabotage the equipment and they don't want to
21 take that kind of risk. The only thing is, is plant manager,
22 Mr. Prendergast, he didn't get that memo. He's been writing
23 people up and he follows the procedure in the collective
24 bargaining agreement.

25 The collective bargaining agreement, if we can go to

1 the section, that's -- was is that P? Is it P-21? Yeah. If
2 we can go to the section on progressive discipline.

3 He cited that nearly word for word.

4 Well, let me just tell you this, I don't want to take
5 up too much of my 30 minutes, but you're going to be given a
6 copy of the collective bargaining agreement, so you'll find it
7 in there. So what Mr. Prendergast said was pretty much word
8 for word what's in the collective bargaining agreement, in the
9 section on progressive discipline.

10 Now, you all will also see, on P-8, that some people
11 were -- that they noted that people were written up prior to
12 their termination since 2015. So this has been going on, even
13 -- this has been going on for years.

14 Now -- so what do we make of this lie? If a person
15 lies, then you may choose to disregard all or some of their
16 testimony, depending on the situation, but it definitely should
17 be considered. And in this case, when the -- when the person
18 is actually lying to try to deflect the truth about the act --
19 the discriminatory act here, which was the termination, then
20 you really got to think about that. And so, if he's willing to
21 say, oh, there's no evidence of a write-up because we didn't
22 even write people up, then you got to ask yourself, well, so
23 now we find out he -- there's -- there are write-ups. He was
24 lying. What's the truth?

25 Now, we heard the testimony of Fred Baker (sic

1 throughout) and I -- I warned you yesterday that he wasn't
2 exactly on our side. Fred Baker is the union representative.
3 I told -- I told you up front, this guy is not going to really
4 be for us. And I brought him in to just show that the union
5 was useless to Mr. Watson and there was no binding decision
6 made with the union regarding his termination. Mr. Braker
7 would like you to believe that he went over to the plant and
8 questioned people and he stated some hearsay from a coworker.

9 And I ask you, why would you take the word of a
10 coworker on a person's performance and not just go straight to
11 the source, Mr. Lloyd or Mr. Prendergast? It makes no sense.
12 But even more so, if we look at Exhibit P-17, P-17 he
13 summarizes what he did, which is completely consistent with
14 what Mr. Watson said. He said, I met with Mr. Watson after his
15 layoff and researched that he was the lowest in seniority;
16 therefore, there was nothing we could do, as Lloyd Industries
17 was following RCBA. So he didn't even research who had lower
18 seniority. I show him a list, I show him all the people we
19 just mentioned that were hired after him and he said, oh, I
20 didn't have that. Isn't that the thing that he has to look at
21 to determine if somebody has lower seniority?

22 Another thing is, is that if you look at P-17, it
23 seems like he's trying to help the employer. That email was
24 written nine months after the investigation was completed,
25 delivered to Tom Prendergast. Well, as you recall, Mr. Watson

1 filed a PHRC complaint, complaint of discrimination. You got
2 to ask yourself, was that an email just sent to them to help
3 them with that PHRC case? I think you can see, this guy is
4 willing to compromise the truth to help the employer over a
5 union member. It's just -- it's just a horrible situation.
6 But I -- I just really needed to bring him in just to show that
7 there was nothing binding with the union. And I think you can
8 make your own conclusions on this gentleman.

9 Now, there's no reason to not terminate a person for
10 cause, if a person comes in drunk, or -- I'd fire him the first
11 day, most people would, a person comes in -- is not having good
12 attendance, you'd write them up. Three strikes you're out,
13 that way you don't even have to pay unemployment. You know,
14 there's a -- why -- they're trying to say that they're being
15 nice to a person, let them collect unemployment, but the thing
16 is, they -- they don't want to pay unemployment. There's a big
17 -- it's a lot of money. No one wants to pay unemployment. You
18 only can get out of unemployment if you got a reason.

19 They're also misstating the unemployment law. In
20 their -- in their cross, they tried to question Mr. Watson.
21 Well, if a person steals, they won't get unemployment, right?
22 Well, they never said that he did anything intentional
23 misconduct like that. That's the only way you can't
24 unemployment, if you're guilty of some kind of intentional
25 misconduct at the workplace, or you intentionally quit. But if

1 you're -- if you're fired because of performance, you get your
2 unemployment. So you got -- so this cross-examination really
3 was deceiving. But as I said -- as the Judge will instruct
4 you, lawyers' questions are not evidence.

5 Now, finally, we come down to Mr. Prendergast. And
6 Mr. Prendergast, he came in and he claimed ignorance. He
7 wanted to -- wanted you to think that he just thought --
8 because Mr. Watson was the lowest in seniority in his
9 department, that he was lowest in seniority. And -- but if you
10 recollect, I asked him, well, what about Mr. Broadnax, was he
11 lowest in his seniority in his department too? He couldn't
12 answer it. He just started backing up saying, oh, he was going
13 around talking all over the place, and getting up and talking
14 -- he went back tot he same old line that everybody had, Mr.
15 Broadnax was talking too much at the workplace. We caught him
16 in a lie. He didn't think that just because a person was
17 lowest in seniority in a department they were lowest in
18 seniority because he didn't apply that standard to Mr.
19 Broadnax. Mr. Broadnax wasn't lowest in seniority in his
20 department and Mr. Prendergast couldn't say that.

21 So Mr. Prendergast is the person that laid off the
22 two remaining African-American employees. Did this with
23 consultation with Mr. Lloyd and he was the person that forced
24 Mr. Mathis to quit his job and then just for good -- good
25 measure, he sent out a letter terminating him saying you're

1 terminated. So, in essence, I guess you can say he fired all
2 three of them, but forcing somebody out, as I said, is the same
3 as -- as firing them.

4 Now, if you -- the Judge is going to instruct you
5 that to prevail on this claim, Mr. Watson must prove, number
6 one, he was terminated; and number two, that race was a
7 determinative factor in the decision to terminate his
8 employment. So determinative factor means that if not for Mr.
9 Watson's race, he would not have been terminated. Direct
10 evidence is not required, as I said. We need to get inside the
11 person's head. How do we do that? We do that with the
12 evidence, what the evidence shows. And as I showed you, the
13 evidence shows reason to doubt the proffered reason for
14 termination. We have lies and we have trying -- things --
15 trying to -- to pull the wool over your eyes, a big smoke
16 screen. Everything under the sun thrown -- thrown out. That
17 he's drunk, he's a bad employee. He has bad per -- bad
18 attendance.

19 And I'll tell you one thing about the attendance, I
20 -- we calculated it at 33.8 hours or whatever it was. On
21 Exhibit, was that P-19, I think? But if you take out the
22 couple of weeks where he was working 16 hours, and a couple
23 other hours, take out those weeks, maybe he was sick or, you
24 know, there must have been some good reason why he wasn't in
25 because he never wrote him up, then his average then goes up to

1 36-something, you'll see, if you want to do the math on it.

2 People that are required to come in 40 hours a week
3 are never going to average 40 hours on the nose. If they're
4 sick one time, it's going to be 39.9. So them saying, oh, a
5 person has to work 40 hours a week to be full time is not true.
6 You just have to be the guy -- you have to be a full-time
7 employee and your hours are whatever they are, 9 to 5, and
8 you're supposed to come in 40 hours a week. It just doesn't
9 happen in reality.

10 THE COURT: Mr. Dion, you're close to 30 minutes and
11 I know you want to save some time for --

12 MR. DION: Okay.

13 THE COURT: -- rebut.

14 MR. DION: What's the time I have, Your Honor?

15 THE COURT: Well, hang on. Why don't you close up
16 and then --

17 MR. DION: All right. Okay.

18 THE COURT: -- you can have five minutes for
19 rebuttal.

20 MR. DION: Okay. So if you find in favor of Mr.
21 Watson, there are three types of damages to award; there's
22 compensatory damages for pain -- emotional pain and suffering,
23 and then there's -- there's loss pay, and there is punitive
24 damages if you want to punish the defendant for their conduct.

25 As you saw Mr. Watson, when he testified, I think you

1 could see that he was very proud of his work. The -- he sat
2 here skirting out all the different machines that he worked on,
3 and the type of things that he did, and most especially when he
4 got his new job, he explained to you how much he likes it, and
5 how proud he is of it, and how well-liked he is over there.
6 And imagine being two and a half years not having that.

7 Thank you very much.

8 THE COURT: Okay. Okay, Mr. Cohen.

9 CLOSING ARGUMENT

10 MR. COHEN: Thank you. May it please the Court, Your
11 Honor, counsel, ladies and gentlemen of the jury. I want to,
12 first, thank you for your attentiveness and your time to help
13 us resolve this dispute.

14 This case was filed in March of 2017. It was a weak
15 case when it was filed. It only got weaker as we went through
16 discovery. Facts matter in this case. This is the point in
17 the case where we tell you what we think the facts should show,
18 but only your recollection and your intuition will hold sway in
19 what facts are believed.

20 This case is a simple case. It's about whether Mr.
21 Watson was discriminated against by my client, Lloyd
22 Industries. It's not about whether he should have been
23 terminated because he showed up with alcohol on his breath.
24 It's not about seniority. It's not about all this other stuff
25 that's been thrown at you. That's not it at all.

1 Counsel has presented his version of the facts, which
2 we categorically deny was the evidence in this case.
3 References to lies without telling you -- this case really is
4 about how Mr. Watson was treated. And if you listen to his
5 testimony, and I'm going to get -- cover the testimony, Mr.
6 Watson, when he testified, was upset more with the fact that he
7 was laid off than why he was laid off. And let's face the
8 facts, it's never fun to be laid off from a job. It's not a
9 pleasant experience. Nobody walks away happy, neither the
10 employer, nor the employee. And the sense that -- listening to
11 his testimony was that he was more upset about the process of
12 being laid off.

13 With respect to the evidence in this case, the
14 evidence that you've heard is from the witness stand and
15 documents that we've reviewed. And let's go through the
16 witnesses. Shaun Mathis. Shaun Mathis, under oath, said --
17 and I asked him, did you ever feel that you were treated
18 wrongly or differently because of the color of your skin? And
19 he's biracial. His answer was no. I'm not even sure why he
20 came in to testify because he didn't provide you with any of
21 evidence, whatsoever, of any racial mistreatment at Lloyd
22 Industries. He said that he had a dispute with Mr. Prendergast
23 concerning his schedule. This is not a trial about Mr. Mathis'
24 schedule.

25 Another witness in the case, Fred Braker, the union

1 representative. Mr. Dion and the plaintiff subpoenaed him to
2 be here to testify. I've been practicing law for 33 years. I
3 have to say, I have never --

4 THE COURT: No, you can't test -- you can't argue
5 that.

6 MR. COHEN: Okay. I'll -- the bottom line is, Mr.
7 Dion presented that evidence and then he just threw that
8 evidence under the bus. And what he said was, Fred Braker came
9 in, he's the union rep. Union reps are there for the employees
10 and basically said that I did an investigation, basically three
11 years ago, I found that there was a basis for Mr. Watson to be
12 laid off and I told him take the layoff. This issue about
13 being drunk, there's no testimony that Mr. Watson showed up to
14 work drunk. They said he had alcohol on his breath. And Mr.
15 Lloyd stated, in his testimony, that if he showed up
16 intoxicated and couldn't work, we'd send him home. There's
17 been no evidence about that. I don't know what all this is
18 about being drunk. He had alcohol on his breath, okay. He
19 wasn't a great employee. Mr. Braker said he wasn't a great
20 employee, okay? They laid him off because there was a lack of
21 work, okay? And he was allowed to get unemployment.

22 You hear a lot of argument and limited testimony
23 about the policies of Lloyd Industries in terms of not writing
24 people up. There was testimony from both the Lloyd and if you
25 recall there was some testimony from Braker that they don't

1 write people up because they don't want them sabotaging the
2 equipment. They had a history of that happening.

3 Now, does that make sense that they don't write them
4 up? I think you can use your own experience and, yeah, that
5 probably does make sense. Mr. Braker is not happy about them
6 doing that, but that's how -- that's their policy. One of the
7 people we didn't hear about was referenced throughout this
8 trial, Shawn Broadnax (Phonetic). Plaintiff had the
9 opportunity to subpoena him to testify. They keep referring to
10 Shawn Broadnax; he never testified in this case.

11 Now, why is that? I think it's safe to say that he
12 probably wasn't supportive of their case and that's why they
13 had to bring him in because he didn't testify. He was somebody
14 that worked closely with Ronald Watson throughout the time he
15 was at Lloyd Industries. He doesn't testify in the case. It's
16 kind of -- kind of confusing.

17 Now, Zenetta Ruffin. Zenetta Ruffin was asked, did -
18 - and I asked on cross examination, did Ronald -- did your
19 husband ever come home and complain that he was mistreated at
20 Lloyd Industries because of his race? And her answer was no.
21 Very telling answer. There was no racial discrimination in
22 this case and there never has been. This case is really -- you
23 know, it's about your recollection. We heard from the -- the
24 plant manager, Tom Prendergast, okay. He testified that Ronald
25 Watson worked at the plant, that he was not a great employee

1 but that he would do his job and would work certain hours. He
2 missed a ton of time from work.

3 His average weekly hours for 11 months was 33.87
4 hours, okay? That's not missing a day here or an hour there,
5 that's missing a whole lot of time. And the collective
6 bargaining agreement that plaintiff has presented to you
7 basically says, if you're not a full-time employee the
8 seniority issue doesn't even matter. It's kind of a red
9 herring in this case. And besides that if you read Section 10
10 it's at the discretion of the employer if they place someone in
11 another position.

12 Now, Ronald Watson was not a great employee, but he
13 wasn't terminated. He was terminated because they gave him an
14 opportunity to improve. Now, with regards to Bill Lloyd, Bill
15 Lloyd sat -- he was the first witness in this case, he answered
16 the questions, he told the truth, he was consistent. There's
17 nothing that counsel did with any of the witnesses on behalf of
18 the defense in which he showed inconsistencies or inaccuracies.

19 One of the I believe the key pieces of evidence in
20 this case -- and, again, that's up to you to determine, was
21 when the grievance form -- and this is D9, the grievance form
22 -- the grievance form that Mr. Watson went to the union
23 representative and claimed that he had been wrongly treated at
24 Lloyd Industries. And you're going to have an opportunity to
25 learn that he never mentioned one word about racial

1 discrimination. He signed the document after he reviewed it,
2 and he was reluctant to answer that question but to his credit
3 he did answer the question, yeah, I reviewed it and signed it.
4 And he never mentioned one word about racial discrimination.
5 Why is that? Because there was no racial discrimination. His
6 color of his skin had absolutely nothing to do with him being
7 laid off.

8 Now, you've seen the roster of employees that were
9 terminated during that period of time or resigned. Mr. Dion
10 never made one mention of the white employees or the -- or he
11 Hispanic employees that were laid off. It's like they don't
12 matter; he only focused on the African-American ones. Now,
13 there's testimony and it's corroborated that at the Florida
14 plant there are 25 employees: eight of them are African-
15 American, okay? Is that discrimination? Now, there's an issue
16 about only three African-Americans working at the
17 Montgomeryville plant. Now, why is that?

18 Now, Mr. Watson -- I'm sorry, Mr. Lloyd and Mr.
19 Prendergast told you the numbers are the numbers because those
20 are -- we put out advertisements and those are the only people
21 that apply for work. And we don't get African-Americans to
22 apply for work. Is that the fault of Lloyd Industries; is that
23 because of something they've done? No, they're just not
24 getting applicants for the jobs and that's why the racial
25 makeup is what it is. They -- if you look at the roster and

1 that's going to be -- you'll have an opportunity to review
2 that, that is D23, you'll see there's Hispanic, Vietnamese,
3 there's, you know, various different ethnic -- it's like the
4 United Nations, ladies and gentlemen. It's -- there's no
5 discrimination there.

6 The evidence in this case is that Mr. Watson was laid
7 off because of a financial -- a business decision in running
8 Lloyd Industries. It is not your role in this case to
9 determine whether that was a good business decision or not a
10 good business decision. It's a decision they have to make.
11 They made that decision based on the economics. You heard
12 testimony from Ronald Watson that he knew the amount of work
13 that they were always busy. Now, think about that. He doesn't
14 work in the business department, so he doesn't know what orders
15 are coming in for certain parts and certain materials that are
16 produced at Lloyd Industries. How would he know what volume of
17 work is coming into the business when he has no access to it?
18 His testimony made no sense about that. He doesn't know what
19 orders are coming in so how would he know when layoffs need to
20 be made?

21 The biggest complaint he had was he didn't like the
22 way he was laid off. Really not sure why because they allowed
23 him to collect unemployment. You know, did they -- they didn't
24 have a special meeting with him to say, we have to lay people
25 off because work is slow. That's not the practice of Lloyd

1 Industries and that's not something that is on trial here.
2 We're not addressing their practices and procedures of how they
3 lay people off.

4 If you weigh all the evidence in this case, look at
5 all the testimony, it's clear that the burden -- that the
6 plaintiff has not met their burden of proof, that they have not
7 provided you with any evidence whatsoever to show that there
8 was a racial motivation to lay off Ronald Watson. Interesting
9 -- you know, the fact that Shawn Broadnax was laid off and he
10 was laid off for two reasons. He was laid off, number one,
11 because the work that Ronald Watson did was assembled by Shawn
12 Broadnax. So when Ron Watson was laid off there was no work
13 for Shawn Broadnax to do. And then there was an issue with
14 Shawn and his activities and they -- they had to let him go.

15 In terms of Shaun Mathis, he testified that he was
16 having some problems at home. That was his testimony in the
17 witness box and that he wanted -- he needed to adjust his
18 schedule. Mr. Prendergast came in and said, we were talking to
19 him about reworking his schedule. He never got back to us and
20 he stopped showing up for work. What are we supposed to do,
21 keep him on? They let him go because of that. It had nothing
22 to do with the color of his skin.

23 In closing you're going to have an opportunity to
24 hear the law from the judge and the judge is going to tell you
25 what you should apply to the facts. Was there a -- a

1 discriminatory motivation on the part of Lloyd Industries with
2 regard to the layoff of Ron Watson? I think the evidence shows
3 no. The damages that -- and I'll comment on the damages, Mr.
4 -- if you look at the resume of Mr. Watson, he's held countless
5 jobs for four months, six months, nine months, very frequently
6 left work.

7 Is it reasonable with his skill set and his
8 background that he's going to be out of work for two and a half
9 years? It just doesn't make any sense. He's claiming these
10 damages but he hasn't proven any damages. He hasn't proven --
11 you know, they brought up the issue of punitive damages.
12 There's been not one shred of evidence in this case that there
13 was any type of reckless or, you know, malice in how Lloyd
14 Industries acted in terms of his treatment. Zero, not one bit
15 of evidence in this. So to even consider these damages,
16 there's no basis for it.

17 We believe based on the evidence in this case and the
18 defendant Lloyd Industries believes that when you get to
19 question 1 of the verdict sheet you're going to say that there
20 was no racial motivation to lay off Mr. Watson. I can't help
21 but believe that if Mr. Lloyd was African-American, if Mr.
22 Prendergast was African-American, that this case never would
23 have been brought. The only facts that they presented to you
24 in this case is that it just happened to be that there was
25 layoffs involving three African-American employees for reasons

1 presented and that it had no racial motivation at all, there's
2 no -- there's been no proof because other people were laid off,
3 white, Hispanic, you know, they're never mentioned, it was a
4 business decision.

5 Again, thank you for your time and your focus in
6 helping us resolve this. And the plaintiff has not proven
7 their case. There's just no evidence to support the various
8 allegations and there's really only one allegation in this case
9 that Mr. Watson was laid off for a racial purpose and that's
10 not the case.

11 Thank you.

12 THE COURT: Okay. Mr. Dion, all right, you've got
13 five minutes for rebuttal.

14 CLOSING ARGUMENT (REBUTTAL)

15 MR. DION: Okay. Thanks, Your Honor.

16 All right. Let's bring up Exhibit P8 to the screen.
17 You had to look at Exhibit P8 and see when Mr. Prendergast was
18 hired and then look at the terminations and layoffs that
19 occurred after that time period. We're not talking about stuff
20 from 2013, people were fired for stealing. You should really
21 take a close look at this sheet and see if there's -- and
22 understand why we're claiming that the three only African-
23 American black employees were fired after Mr. Prendergast came
24 to the company.

25 Now, counsel wants you to believe his story that Mr.

1 Watson only was upset of the way he was terminated and there
2 was no -- I mean, he's trying to instill that in your mind, but
3 cannot a person be upset over the way that they're terminated
4 and also believe they're fired for racial discrimination? He
5 went ahead and made a complaint of racial discrimination, PHRC
6 right away. And sometimes you've got to sit back and think
7 about things, the way that things happened. He may not realize
8 it right away but the bottom line is, he definitely believes it
9 now. And that's why we're here today.

10 Thank you.

11 THE COURT: Okay. Ladies and gentlemen, that
12 completes the arguments. Now, the charge will take about 30
13 minutes, I estimate. Would any member of the jury like a
14 break? We'll take a break, if you want. Otherwise, I'll keep
15 going.

16 All right. I don't see any hands so I'm going to
17 proceed. Now, you're welcome to take notes but I would --
18 you're going to get a -- a typewritten version of 99 percent of
19 what I'm about to say, so I would prefer you listen and sort of
20 get the big picture and then you can consult the instructions
21 as you need to.

22 So you've heard the evidence and you've heard the
23 closing arguments of the lawyers and now it's my duty to
24 instruct you as to the law that is applicable in this case.
25 When I'm done that then you will retire to consider your

1 verdict. You must determine the facts from all the testimony
2 that you have heard and the other evidence such as the exhibits
3 which has been received during this trial. You are the sole
4 judges of the facts. Noone, not even the Court, myself, may
5 infringe upon this responsibility.

6 You may entirely disregard any comments I may make as
7 to my recollection of the evidence during the trial if your
8 recollection of the evidence is different than mine. Nothing I
9 say in these instructions is to be taken as an indication that
10 I have any opinion about the facts of this case. On the other
11 hand and with equal emphasis, I instruct you that you must
12 accept the rules of law as I will give them to you in this
13 charge and you must apply that law to the facts that you have
14 found. You're not to be concerned with the wisdom of any rule
15 of law and you're not to single out one instruction alone but
16 you must consider the instructions as a whole.

17 You must perform your duties as jurors without any
18 bias or prejudice to any party. The law does not permit you to
19 be governed by sympathy, prejudice, or public opinion. All
20 parties expect that you will carefully and impartially consider
21 all of the evidence following the law as it has now been given
22 to you and reach a just verdict regardless of the consequences.

23 In your deliberations you must not consider the facts
24 that Mr. Watson is an individual while Lloyd Industries is a
25 corporation. A corporation is entitled to the same fair trial

1 as a private individual. All persons, including corporations
2 and other organizations, stand equal before the law and are to
3 be treated as equals. The evidence from which you find the
4 facts consist of the testimony of the witnesses, documents, and
5 other things received into the record as exhibits, and any
6 facts that the lawyers agree to or stipulate to, or that I
7 instruct you to find.

8 The following are not evidence and must not be
9 considered by you: statements, arguments and questions by the
10 lawyers are not evidence; objections to questions are not
11 evidence. Lawyers have an obligation to their clients to make
12 objections when they believe evidence that is being offered is
13 improper under the Rules of Evidence. You should not be
14 influenced by the objection or by the Court's ruling on it. If
15 the objection was sustained, you should ignore the question.
16 If it was overruled, treat the answer like any other. You
17 should also not consider testimony that the Court has excluded
18 or told you to disregard. Anything you may have seen or heard
19 outside of the courtroom, is not evidence and must be
20 disregarded. You are to decide the case solely upon the
21 evidence presented here in the courtroom.

22 Now, this is a civil case. Mr. Watson is the party
23 who has brought this lawsuit, and as I told you before, is
24 referred to as the plaintiff. Lloyd Industries is the party
25 against which the lawsuit was filed and is referred to as the

1 defendant. Mr. Watson has the burden of proving his case by
2 what is called the preponderance of the evidence. That means
3 Mr. Watson has to prove to you in light of all the evidence
4 that what he claims is more likely so than not so. To say it
5 differently, if you were to put the evidence favorable to Mr.
6 Watson and the favorable -- and the evidence favorable to Lloyd
7 Industries on opposite sides of the scale, Mr. Watson would
8 have to make the scales tip somewhat on his side. If Mr.
9 Watson fails to meet this burden, the verdict must be for Lloyd
10 Industries. If you find after considering all the evidence
11 that a claim or fact is more likely so than not so, then the
12 claim or fact has been proved by a preponderance of the
13 evidence. And if you find that the scales tip more on Mr.
14 Watson's side, then he has met his burden of proof.

15 In determining whether any fact has been proved by a
16 preponderance of the evidence in a case, you may unless
17 otherwise instructed, consider the testimony of all witnesses,
18 regardless of who may have called them, and all exhibit
19 received in evidence, regardless of who may have produced them.
20 You may have heard the term proof beyond a reasonable doubt.
21 That is a stricter standard of proof and it applies only in
22 criminal cases. It does not apply in civil cases and you
23 should put it out of your mind.

24 Now, in this case Mr. Watson makes two claims under
25 two federal civil rights statutes which is called Title VII and

1 Section 1981, both of which prohibit discrimination against an
2 African-American employee because of his race. Mr. Watson
3 claims that he was terminated from his employment at Lloyd
4 Industries because of his race and/or color, which is African-
5 American and black. Defendant Lloyd Industries denies that
6 plaintiff was discriminated against in any way and that
7 plaintiff was terminated for legitimate business reasons.

8 I will now instruct you more fully on the issues
9 which you must address to this case. You should know that the
10 instructions provided below are applicable to both the Title
11 VII and the 1981 claim. In this case Mr. Watson is alleging
12 that Lloyd Industries intended to discriminate Mr. Watson based
13 on his race and color. In order for Mr. Watson to recover on
14 this discrimination claim against Lloyd Industries he must
15 prove that Lloyd Industries intentionally discriminated against
16 him. This means that Mr. Watson was -- must prove that his
17 race and color was a determinative factor in Lloyd Industries
18 decision to terminate his employment.

19 To prevail in his claim Mr. Watson must prove the
20 following by a preponderance of the evidence. One, first Lloyd
21 Industries terminated Mr. Watson. I don't think there's any
22 dispute about that. Second, Mr. Watson's race and/or color was
23 a determinative factor in Lloyd Industries' decision. Although
24 Mr. Watson must prove that Lloyd Industries acted with the
25 intent to discriminate, Mr. Watson is not required to prove

1 that Lloyd Industries acted with a particular intent to violate
2 his civil rights. Moreover, Mr. Watson is not required to
3 produce direct evidence of intent, such as statements admitting
4 discrimination. Intentional discrimination may be inferred
5 from the evidence of other facts.

6 You should weigh all the evidence received in this
7 case in deciding whether Lloyd Industries intentionally
8 discriminated against Mr. Watson. For example, you have been
9 shown statistics in this case. Statistics are one form of
10 evidence that you may consider when deciding whether a
11 defendant intentionally discriminated against the plaintiff.
12 You should evaluate statistical evidence along with all the
13 other evidence.

14 Lloyd Industries has given a nondiscriminatory reason
15 for its termination of Mr. Watson's employment. If you believe
16 Lloyd Industries stated reason and if you find that the
17 termination would have occurred because of defendant's stated
18 reason regardless of Mr. Watson's race and color, then you must
19 find for Lloyd Industries. If you disbelieve Lloyd Industries'
20 stated reason for its conduct, then you may, but need not, find
21 that Mr. Watson has proved intentional discrimination.

22 In determining whether Lloyd Industries' stated
23 reason for its action was a pretext or excuse for
24 discrimination, you may not question Lloyd Industries' business
25 judgment. You cannot find intentional discrimination simply

1 because you disagree with a business judgment of Lloyd
2 Industries or a belief that it was harsh or unreasonable.

3 You are not to consider Lloyd Industries' wisdom.
4 However, you may consider whether Mr. Watson has proven that
5 Lloyd Industries' reason is merely a coverup for
6 discrimination. All -- you must decide whether Mr. Watson has
7 proven that his race and/or color was a determinative factor in
8 Lloyd Industries' decision to terminate Mr. Watson.
9 Determinative factor means that if not for Mr. Watson's race
10 and/or color, the termination would not have occurred.

11 All right. I'm now going to -- now, that completes
12 my instructions on the substantive elements of the claims that
13 Mr. Watson has brought.

14 I'm now going to give you a charge on compensatory
15 damages. And then I'm going to discuss some other types of
16 damages.

17 Now, just because I'm instructing you on damages does
18 not mean I have any opinion as to whether or not Lloyd
19 Industries should be held liable. As you'll see when we get to
20 the verdict form, if you decide that Lloyd Industries -- that
21 Mr. Watson has not proved Lloyd Industries is liable then you
22 don't consider damages at all. On the other hand if you decide
23 that Mr. Watson has proved that Lloyd Industries is liable,
24 then you must consider the elements of damage, which I am now
25 about to explain to you.

1 The first type of damage I'm going to explain to you
2 is what's called -- what we call compensatory damages. Now,
3 the first thing I want to say is that you -- when Mr. Dion
4 argued, and also Mr. Cohen, they talked about damages in
5 general. They did not mention any specific figure. Mr. Dion
6 did not say he was requesting any specific figure. And that's
7 because the law in this court does not allow lawyers to name
8 specific damage figures. It's completely up to the jury if you
9 decide Mr. Watson is entitled to damages, for you to decide the
10 amount of damages based on the instructions I am about to give
11 you.

12 If you find by a preponderance of the evidence that
13 Mr. -- of the evidence that Lloyd Industries intentionally
14 discriminated against Mr. Watson by terminating him based on
15 his race or color, then you must consider the issue of
16 compensatory damages. You must award Mr. Watson an amount that
17 will fairly compensate him for any injury he actually sustained
18 as a result of Lloyd Industries conduct. The damages that you
19 must award must be fair compensation, no more and no less.

20 The award of compensatory damages is meant to put Mr.
21 Watson in the position he would have occupied if the
22 discrimination had not occurred. Mr. Watson has the burden of
23 proving damages by a preponderance of the evidence. Mr. Watson
24 must show that the injury would not have occurred without Lloyd
25 Industries' act. Mr. Watson must also show that Lloyd

1 Industries' act played a substantial part in bringing about the
2 injury and that -- and that the injury was either a direct
3 result or a reasonably probable consequence of Lloyd
4 Industries's acts. This tests a substantial part in bringing
5 about the injury. It is to be distinguished from the test you
6 must employ in determining whether Lloyd Industries' action
7 was motivated by discrimination.

8 In other words, even assuming that Lloyd Industries'
9 action was motivated by discrimination, Mr. Watson is not
10 entitled to damages for an injury unless Lloyd Industries'
11 discrimination -- discriminatory action actually played a
12 substantial part in bringing about that injury.

13 In determining the amount of any damages that you
14 decide to award, you should be guided by common sense. You
15 must use sound judgment in making -- in fixing an award of
16 damages, drawing reasonable inferences from the acts -- facts
17 in evidence. You may not award damages based on sympathy,
18 speculation, or guess work. You may award damages for any
19 pain, suffering, inconvenience, mental anguish, or loss of
20 enjoyment of life that Mr. Watson experienced as a consequence
21 of Lloyd Industries' allegedly unlawful acts.

22 No evidence of the monetary value of such intangible
23 things as pain and suffering has been or need be introduced
24 into evidence. There's no exact standard for fixing the
25 compensation to be awarded for these elements of damage. Any

1 award you make should be fair in light of the evidence
2 presented at trial. You may award damages for monetary losses
3 that Mr. Watson may suffer in the future as a result of
4 defendant's allegedly unlawful acts.

5 Where a victim of discrimination has been terminated
6 by an employer and has sued that employer for discrimination,
7 he may find it more difficult to be employed in the future, or
8 may have to take a job that pays less than if the
9 discrimination had not occurred. That element of damage is
10 distinct from the amount of wages Mr. Watson would have earned
11 in the future from Lloyd Industries if he had retained the job.

12 As I instructed you previously, Mr. Watson has the
13 burden of proving damages by a preponderance of the evidence.
14 But the law does not required that Mr. Watson prove the amount
15 of his losses with mathematical precision and requires only has
16 much definiteness and accuracy as circumstances permit.

17 You are instructed under -- that Mr. Watson has a
18 duty under the law to mitigate his damages. That means that
19 Mr. Watson must take advantage of any reasonable opportunity
20 that may have existed under the circumstances to reduce or
21 minimize the loss or damage caused by Lloyd Industries. It is
22 Lloyd Industries' burden to prove that Mr. Watson has failed to
23 mitigate. So if Lloyd Industries persuades you by a
24 preponderance of the evidence that Mr. Watson failed to take
25 advantage of an opportunity that was reasonably available to

1 him, then you must reduce the -- the amount of Mr. Watson's
2 damages by the amount that it could have been reasonably
3 obtained -- that he could have reasonably obtained if he had
4 taken advantage of such an opportunity.

5 In assessing damages, you must not consider
6 attorneys' fees or the cost of litigating this case.
7 Attorneys' fees and costs, if relevant at all, are for the
8 Court and not for the jury to determine. Therefore, attorneys'
9 fees and costs should play no part in your calculation of
10 damage.

11 All right. I'm now going to charge you specifically
12 on what we call back pay damages. I instruct you that in
13 awarding compensatory damages, you are not to included damages
14 for the amount of wages that Mr. Watson would have earned in
15 the past if he had continued employment with Lloyd Industries.
16 These elements of recovery of wages that Mr. Watson would have
17 received from Lloyd Industries are called back pay. Back pay
18 is to be awarded separately under the instructions that I'm
19 about to give you. And any amount of back pay is to be entered
20 separately on the verdict form.

21 You may award as back pay damages an amount that
22 reasonably compensates Mr. Wilson for any lost wages and
23 benefits, taking into consideration any increases in salary and
24 benefits, including pension, that Mr. Watson would have
25 received from Watson [sic] Industries had Mr. Watson not been

1 the subject of Lloyd Industries' intentional discrimination.
2 Back pay damages, if any, apply from the time Mr. Watson was
3 terminated, which was October 29th, 2015, until April 9th,
4 2018. Now, that's the date that counsel have agreed upon when
5 Mr. Watson got another job.

6 You must reduce any award by the amount of the
7 expenses that Mr. Watson would have incurred in making those
8 earnings. If you award back pay, you're instructed to deduct
9 from the back pay figure whatever wages Mr. Watson has obtained
10 from other employment during this period. However, please note
11 that you should not deduct Social Security benefits,
12 unemployment compensation, and pension benefits from any award
13 of back pay.

14 There's another form of damages that I'm going to
15 instruct you on called nominal damages. If you return a
16 verdict for Mr. Watson but Mr. Watson has failed to prove
17 actual injury and therefore is not entitled to compensatory
18 damages, then you must award nominal damages of one dollars. A
19 person whose federal rights were violated is entitled to
20 recognition of that violation even if he suffered no actual
21 injury. Nominal damages of one dollar are designed to
22 acknowledge the deprivation of a federal right even where no
23 actual injury occurred. However, if you find actual injury you
24 must award compensatory damages as I instructed you rather than
25 nominal damages.

1 Now, I'm going to charge you on one other type of
2 damage called punitive damages but I'll come back to that in a
3 minute.

4 I'm now going to instruct you generally on the
5 principals of law that you should consider as you review the
6 evidence. But once again, I repeat to you that I am not
7 commenting on the facts of the case. Those are for you to
8 decide and I have no opinion as to what your verdict should be.

9 There are two types of evidence that the law allows
10 and that you may use in reaching your verdict. One type of
11 evidence is called direct evidence. An example of direct
12 evidence is when a witness testifies about something that the
13 witness knows through his own senses. Something the witness
14 has seen, felt, touched, or heard or did. If a witness
15 testifies that he saw it raining outside and you believed him,
16 that would be direct evidence that it was raining outside.
17 Now, we're in a closed courtroom, we can't see what's going on
18 outside. But if somebody came in here and said, I was just
19 outside and it was raining and you believe that witness, you
20 may accept as a fact that it is raining outside.

21 Now, the other type of evidence is called
22 circumstantial evidence and that's proof of one or more facts
23 from which you could find another fact. If someone walked into
24 the courtroom -- this courtroom -- wearing a raincoat, covered
25 with drops of water and carrying a wet umbrella, that would be

1 circumstantial evidence from which you conclude that it was
2 raining outside. That is the direct evidence is when a person
3 gets on the stand and said, I was just outside and it is
4 raining. Circumstantial evidence is when that person doesn't
5 come on the stand, they walk in the courtroom, and most people
6 if they saw a wet raincoat and a dripping umbrella would
7 conclude from that that it was raining outside even though
8 there was no testimony to that effect. That's what we mean by
9 circumstantial evidence.

10 You should consider both types of evidence that are
11 presented to you. The law makes no distinction in the weight
12 to be given to either direct or circumstantial evidence. You
13 are to decide how much -- you are to decide how much weight to
14 give any evidence.

15 Now, as I said at the very beginning of the case,
16 credibility is a very important issue here. Credibility is a
17 fancy word for believability. In deciding what the facts are,
18 you have to decide what testimony you believe and what
19 testimony you do not believe. You are the sole judges of the
20 credibility of the witnesses. Credibility means whether a
21 witness is worthy of belief. You may believe everything a
22 witness says or only part of it or none of it.

23 In deciding what to believe, you may consider a
24 number of factors including the following: the opportunity and
25 the ability of the witness to see or hear or know the things

1 the witness testifies to; the quality of the witness'
2 understanding and memory; the witness' manner while testifying;
3 whether the witness has an interest in the outcome of the case,
4 and any motive bias or prejudice; whether the witness is
5 contradicted by anything the witness said or wrote before trial
6 or by other evidence; how reasonable a witness' testimony is
7 when considered in the light of other evidence you believe; and
8 any other factors that bear on believability.

9 The weight of the evidence to prove a fact does not
10 necessarily depend on the number of witnesses who testify.
11 What is more important is how believable the witnesses are and
12 how much weight you think their testimony deserves. A witness
13 may be discredited or impeached by contradictory evidence or by
14 evidence that at some other time the witness has said or done
15 something or has failed to say or do something that is
16 inconsistent with the witness' present testimony. If you
17 believe any witness has been impeached and thus discredited,
18 you may give the testimony of that witness such credibility if
19 any you think it deserves. If a witness is shown knowingly to
20 have testified falsely about any material matter, you have the
21 right to distrust such witness' other testimony, and you may
22 reject all the testimony of that witness, or give it such
23 credibility as you think it may deserve. An act or omission is
24 knowingly done if the act is done voluntarily and intentionally
25 and not because of mistake or accident or other innocent

1 reason.

2 I'm now going to charge you with the last type of
3 damages which we call punitive damages. Mr. Watson claims that
4 the acts of Lloyd Industries were done with malice or reckless
5 indifference to Mr. Watson's federally protected rights and
6 that as a result there should be an award of what are called
7 punitive damages. A jury may award punitive damages to punish
8 the defendant or to deter the defendant and others like the
9 defendant from committing such conduct in the future.

10 An award of punitive damages is permissible in this
11 case, only if you find by the preponderance of the evidence
12 that a management official of Lloyd Industries personally acted
13 with malice or reckless indifference to Mr. Lloyd -- to Mr.
14 Watson -- to Mr. Watson's federally protected rights. An
15 action is with malice if a person knows that it violates the
16 federal law prohibiting discrimination and does it anyway. An
17 action is with reckless indifference if taken with knowledge
18 that it may violate the law.

19 An award of punitive damages is discretionary. That
20 is if you find that the legal requirements for punitive damages
21 are satisfied, then you may decide there were punitive damages
22 but you decide not to award them. I will now discuss some
23 considerations that should guide your exercise of this
24 discretion. If you have found the elements permitting punitive
25 damages as discussed in this instruction, then you should

1 consider the purposes of punitive damages. The purposes of
2 punitive damages are to punish a defendant for a malicious or
3 reckless disregard of federal rights or to deter a defendant
4 and others like the defendant from doing similar things in the
5 future, or both. Thus you may consider whether to award
6 punitive damages to punish Lloyd Industries.

7 You should also consider whether actual damages,
8 standing alone, are sufficient to deter or prevent Lloyd
9 Industries from again performing any wrongful acts it may have
10 performed. Finally, you should consider whether an award of
11 punitive damages in this case is likely to deter others from
12 performing wrongful acts similar to those Lloyd Industries may
13 have committed.

14 If you decide to award punitive damages you should
15 also consider the purposes of punitive damages in deciding the
16 amount of punitive damages to award. In deciding the amount of
17 punitive damages you should consider the degree to which Lloyd
18 Industries should be punished for its wrongful conduct and the
19 degree to which an award of one sum or another will deter Lloyd
20 Industries or others from committing wrongful acts in the
21 future. You should also consider if you are to award punitive
22 damages, it's relationship to the amount of compensatory
23 damages or back pay that you may have already awarded.

24 That completes my instructions on the law -- rules of
25 law applicable to this case. Shortly you're going to retire to

1 consider your verdict. Your verdict must be unanimous. The
2 attitude and conduct of the jurors at the outset of their
3 deliberations are matters of considerable importance. Upon
4 retiring to the jury room your deliberations should being and
5 proceed in a orderly fashion. Your first order of business in
6 the jury room, being select one of you as foreperson to preside
7 over your deliberations.

8 The foreperson's vote is entitled to no greater
9 weight than of that of any other juror. If in the course of
10 your deliberations you should find yourself in serious doubt
11 concerning one portion of my instructions to you on the law,
12 then it's your privilege to return to the courtroom for further
13 instructions. In the event you would transmit a note -- in
14 that event you should transmit a note to me through the court
15 deputy signed by your foreperson. No juror should attempt to
16 communicate with the Court by any means other than a signed
17 writing and the Court will not communicate with the Court --
18 and the Court will not communicate with any juror on any
19 subject touching the merits of the case or otherwise, than in
20 writing, or orally here in open court.

21 You should not at any time reveal, even to the Court,
22 how the jury stands until you've reached a verdict. Your
23 function is to reach a fair conclusion from the evidence and
24 the applicable law. And this is an important function. Your
25 verdict should be reached only after a careful and thorough

1 deliberation. In the course of which you should consult with
2 each other and discuss the evidence and reasonable inferences
3 to be drawn therefrom, freely and fairly in a sincere effort to
4 arrive at a just verdict.

5 It is your duty to consider the issues with a view
6 towards reaching an agreement on a verdict, if you can without
7 -- and if you can do so without violating your individual
8 judgment and your conscience. You must each decide the case
9 for yourself examining the issues and the evidence with candor
10 and frankness and with proper deference to and regard for the
11 opinions of each other. Your consideration requires that you
12 be willing to reexamine your own views and change your opinion
13 if convinced that it lacks merit or validity. While
14 maintaining this flexibility, you are not required to surrender
15 your honest conviction as to the weight or effect of evidence
16 solely because of another juror's opinion or for the mere
17 purpose of returning a verdict.

18 Your verdict must represent the jury's considered
19 final judgment. Once you reach a verdict, you will then inform
20 the bailiff or the deputy that the jury has reached a verdict
21 so that you can be returned to the courtroom to render your
22 verdict.

23 I'm going to go over with you a form of verdict very
24 shortly and it has a series of questions for you to answer.
25 You'll take this verdict form to the jury room and when you've

1 reached a unanimous agreement as to your verdict, the
2 foreperson will fill it in and sign and date the form. You
3 will then return to the courtroom and a foreperson will give
4 your verdict. Unless I instruct you otherwise, do not reveal
5 your answers to the verdict until you're discharged.

6 Keep in mind that the dispute the parties is for them
7 a most serious matter. They and the Court rely on you to give
8 full consideration and conscientious deliberation to the issues
9 and the evidence before you. You should not -- not allow
10 sympathy or prejudice to influence your deliberations. You
11 should not be influenced by anything other than the law and the
12 evidence of the case. All the parties stand equally before the
13 Court and each is entitled to the same fair and impartial
14 treatment at your hands.

15 All right. Now, Ms. Lutz will hand out -- I have
16 four copies of the verdict form, so you'll share one among
17 yourselves. Just share it with your neighbor; it's not very
18 long.

19 All right. So question number 1, has plaintiff
20 proven by a preponderance of the evidence that his race and/or
21 color was a determinative factor in defendant's decision to
22 terminate his employment. And then you check yes or no. If,
23 yes, you'll proceed to number 2. If an answer is no, then
24 you've decided the case for the defendant Lloyd Industries and
25 you need not go any further.

1 Then number 2, what amount, if any, do you assess
2 against the defendant to compensate plaintiff for compensatory
3 damages to fairly compensate him for any injury he actually
4 sustained as a result of defendant's conduct, not including
5 back pay, which is requested separately below. So if you find
6 compensatory damages for the plaintiff, you would just put the
7 -- put a dollar sign and the amount of damages.

8 Question 3, what amount, if any, do you assess
9 against the defendant to compensate plaintiff for back pay from
10 the time of his termination on October 29th, 2015 through April
11 9th, 2018. So if you decide to award back pay, you would then
12 put a dollar sign and the amount you find right in there.

13 Then question number 4 -- question number 4 is, has
14 plaintiff proven by a preponderance of the evidence that a
15 management official of defendant personally acted with malice
16 or reckless indifference to his federally protected rights?
17 And you answer that yes or no, if you -- if you consider that.
18 And if it's yes, then you proceed to number 5 where you once
19 again put the dollar sign and the amount if you find punitive
20 damages. If the answer is no then -- whatever -- once you've
21 completed this, then the foreperson should sign it and date it.

22 Now, if you find nominal damages as I said, one
23 dollar, you could put that on any of the item of damages.
24 Okay? But if you find actual damages, then you have -- you
25 should not award nominal damages.

1 All right. Do counsel want to see me at sidebar?

2 Mr. Dion?

3 MR. DION: (No Verbal Response)

4 THE COURT: Yes?

5 MR. DION: Yes, Your Honor.

6 THE COURT: All right. Just give me a minute,
7 please.

8 (The following conference was held at the bench.)

9 THE COURT: Anything you want me to say in addition?

10 MR. DION: No, Your Honor. We do have the exhibits
11 for the --

12 THE COURT: Yeah. Are you agreed on what exhibits go
13 to the jury?

14 MR. COHEN: I do. We -- that's to go to the jury as
15 well.

16 THE COURT: All right. Well, just show each other.

17 MR. COHEN: I did.

18 THE COURT: Any corrections you have?

19 MR. DION: No, I -- did you make the charge on
20 statistical evidence?

21 THE COURT: What?

22 MR. DION: Statistical evidence, the statistical
23 evidence?

24 THE COURT: Yeah, I said that.

25 MR. COHEN: Okay. Yeah, yeah. I just -- this is to

1 go to the jury.

2 MR. DION: These other ones, I had given you some
3 exhibits that I didn't use in my case.

4 THE COURT: Well, the jury should just get the actual
5 exhibits that you -- that were introduced.

6 MR. DION: All of them?

7 THE COURT: They only get -- the jury should only get
8 the exhibits --

9 MR. DION: Correct.

10 THE COURT: -- that were shown to the jury.

11 MR. DION: Right.

12 THE COURT: See, you should go over that with each
13 other.

14 MR. DION: We did.

15 THE COURT: All right. Well, then just get me -- I
16 don't want to give them a list. They'll get the exhibits not a
17 list.

18 MR. DION: Okay. I can do that, Your Honor.

19 MR. COHEN: Okay.

20 THE COURT: Just look at each other's.

21 MR. COHEN: Okay.

22 (End bench conference.)

23 THE COURT: Okay. All right. Ladies and gentlemen,
24 the lawyers will prepare the exhibits -- all of the exhibits
25 that were shown to the witnesses during the trial will be sent

1 out to you shortly. Okay? Along with a copy of the charge.
2 And give them whatever consideration you think.

3 Now, let me just say something. I understand --
4 lunch is due at noon --

5 THE CLERK: Eleven-thirty.

6 THE COURT: Eleven-thirty, okay. So you'll start
7 your deliberations and then -- and elect a foreperson as I
8 said, and then you can take a break when your lunch comes.
9 Now, I have to be out of the building here from approximately
10 1:30 till about three o'clock. All right. So if you have any
11 questions, I urge you to write them down and -- but you should
12 continue and then give them to Ms. Lutz or whoever is waiting
13 outside the courtroom and they'll give them to me.

14 And if you can do that before 1:30, that would be a
15 good idea because I don't -- I don't want to delay your verdict
16 while I'm out of the building. Okay. And if you -- now if you
17 have any questions, you should continue your deliberations on
18 something else, because I have to go over the questions with
19 counsel before I call you into the courtroom to answer them.
20 So if you -- if you raise -- any questions I have to call you
21 back into the courtroom and I have to discuss the questions
22 with the lawyers first, what my answer should be, and then call
23 you back in and I'll give you the answer. That's how that
24 works so we may need a little bit of time to get that
25 organized, so if there are any questions -- I'm not -- I'm not

1 saying there has to be questions but if there are any questions
2 you have the privilege -- but they must be in writing and
3 signed by the foreperson.

4 Now, if you reach a verdict before I get back which
5 will be around three o'clock, you should advise Ms. Lutz of
6 that and she will seal the verdict and you can then take a
7 recent -- if you want to go outside or something like that, you
8 can do that, but then you should be back here at three o'clock,
9 because you have to come into court and announce the verdict in
10 open court.

11 Okay. So with that, the jury is excused. Thank you
12 very much and begin your deliberations. And the exhibits
13 should come out shortly. And here's the charge. Okay. And
14 just take the verdict form. And whoever is elected the
15 foreperson, would then use that verdict form to record the
16 verdict.

17 (The jury exited the courtroom to begin deliberations.)

18 THE COURT: Okay. You'll go over the exhibits with
19 each other. Let Ms. Lutz know if there's any dispute.

20 MR. COHEN: We already did.

21 THE COURT: What?

22 MR. COHEN: All done.

23 THE COURT: Okay.

24 MR. COHEN: We took care of it. Your Honor, did I
25 hear you correctly you're going to leave till three o'clock or

1 you're not -- you're --

2 THE COURT: Well, I don't -- I want you to be readily
3 available between now and 1:30.

4 Oh, you're going to --

5 MR. COHEN: Well, I was just going to stay here.

6 THE COURT: You're going to stay here?

7 MR. COHEN: Yeah.

8 THE COURT: Mr. Dion, where are you going to be?

9 MR. DION: Your Honor, we will take our stuff back to
10 the office and then --

11 THE COURT: Well, where is your office?

12 MR. DION: Downtown, Rittenhouse Square --
13 Rittenhouse Square.

14 THE COURT: Well, that's pretty far away.

15 MR. DION: Yeah.

16 THE COURT: Why don't you stay here till -- for a
17 half hour.

18 MR. DION: Okay.

19 THE COURT: Just in case there are any questions
20 before lunch comes.

21 MR. DION: Okay.

22 THE COURT: All right? And then if you want to go,
23 make sure Ms. Lutz has the cell phone --

24 MR. DION: All right.

25 THE COURT: -- before you leave. And make sure you

1 -- if we call you, we don't get voice mail, okay?

2 MR. DION: Your Honor, there is one evidence I showed
3 to the jury --

4 THE COURT: Yeah, pull the microphone --

5 MR. DION: -- a Defense exhibit.

6 THE COURT: -- closer to you.

7 MR. DION: Oh, okay. Yeah, there was a defense
8 exhibit that I showed to the jury. It was -- do you know which
9 one it was?

10 UNIDENTIFIED SPEAKER: D19, the letter.

11 MR. DION: D19 and defendants didn't put it in their
12 packet.

13 THE COURT: Well, if it was shown to the jury, the
14 jury is entitled to have it.

15 Do you agree with that, Mr. Cohen?

16 MR. COHEN: I don't know that the jury saw it.

17 THE COURT: Well, P19 is --

18 MR. COHEN: It was D19?

19 MR. DION: D19. D19, Your Honor.

20 MR. COHEN: It had to do with Mathis.

21 THE COURT: You know, the jury was shown -- I
22 remember the jury looked at this. All right. D19 should go to
23 the jury.

24 MR. COHEN: Okay.

25 THE COURT: All right. Thank you.

1 MR. COHEN: That's fine.

2 MR. DION: Thank you, Your Honor.

3 MR. COHEN: We'll put it in there.

4 THE COURT: All right.

5 MR. DION: Do you want me to put it in?

6 MR. COHEN: I --

7 THE COURT: All right. Just -- you should agree with
8 each other what's going in.

9 MR. COHEN: Okay. It doesn't matter.

10 THE COURT: All right. So D19.

11 MR. COHEN: It's just one page. It's one letter.

12 THE COURT: All right. Just look at the folder so
13 you're in agreement.

14 All right. Thank you.

15 (Recess from 11:00 a.m. to 1:08 p.m.)

16 THE COURT: Okay. Good afternoon. Counsel are here,
17 and the parties. I'm told we have a verdict.

18 Bring the jury in, please.

19 (The jury enters the courtroom.)

20 THE COURT: All right. Everyone remain seated except
21 the foreperson remain standing, please.

22 All right. Juror Number 2, good afternoon. You're
23 the foreperson?

24 THE JURY FOREPERSON: I am.

25 THE COURT: All right. I'm told the jury has reached

1 a verdict, is that correct?

2 THE JURY FOREPERSON: We have.

3 THE COURT: Is the jury unanimous?

4 THE JURY FOREPERSON: Yes.

5 THE COURT: All right. I will now read the questions
6 and then you'll give the answers and then I'm going to ask each
7 juror if they agree.

8 You may be seated.

9 Now, question number 1, has plaintiff proven by a
10 preponderance of the evidence that his race and/or color was a
11 determinative factor in defendant's decision to terminate his
12 employment?

13 THE JURY FOREPERSON: Yes.

14 THE COURT: Two, what amount, if any, do you assess
15 against the defendant to compensate plaintiff for compensatory
16 damages to fairly compensate him for any injury he actually
17 sustained as a result of defendant's conduct, not including
18 back pay which is requested separately below?

19 THE JURY FOREPERSON: Fifty thousand dollars.

20 THE COURT: Paragraph 3, what amount, if any, do you
21 assess against the defendant to compensate plaintiff for back
22 pay from the time of his termination on October 29th, 2015
23 through April 9th, 2018?

24 THE JURY FOREPERSON: Forty-nine thousand, nine
25 hundred and sixty dollars.

1 THE COURT: Four, has plaintiff proven by a
2 preponderance of the evidence that a management official of
3 defendant personally acted with malice or reckless indifference
4 to his federally protected rights?

5 THE JURY FOREPERSON: Yes.

6 THE COURT: Number 5, if any, do you assess against
7 the defendant for punitive damages in order to punish the
8 defendant for malicious or reckless disregard of federal rights
9 or to defer defendant and others like the defendant from doing
10 similar things in the future or both?

11 THE JURY FOREPERSON: Seven hundred and fifty
12 thousand dollars.

13 THE COURT: Okay. Thank you. Please be seated.
14 And you signed that?

15 THE JURY FOREPERSON: I did.

16 THE COURT: All right.

17 All right. Juror Number 1, do you agree with the
18 verdict as just been announced?

19 JUROR NUMBER 1: Yes.

20 THE COURT: All right. Juror Number 2, do you agree
21 with the verdicts just been announced?

22 JUROR NUMBER 2: (No Verbal Response)

23 THE COURT: Juror Number -- repeat your -- now,
24 you're answering as an individual juror?

25 JUROR NUMBER 2: Yes.

1 THE COURT: All right.

2 Juror Number 3, do you agree with the verdict as just
3 been announced by the foreperson?

4 JUROR NUMBER 3: Yes.

5 THE COURT: You have to answer verbally.

6 JUROR NUMBER 3: Yes.

7 THE COURT: All right.

8 Juror Number 4, do you agree with the verdict that's
9 just been announced by the foreperson?

10 JUROR NUMBER 4: Yes.

11 THE COURT: All right.

12 Juror Number 6, do you agree with the verdict that
13 has just been announced by the foreperson?

14 JUROR NUMBER 6: Yes.

15 THE COURT: Juror Number 7, do you agree with the
16 verdict that's just been announced by the foreperson?

17 JUROR NUMBER 7: Yes.

18 THE COURT: Juror Number 8, do you agree with the
19 verdict that has just been announced by the foreperson?

20 JUROR NUMBER 8: Yes.

21 THE COURT: Okay. All right. The verdict will be
22 recorded.

23 Ladies and gentlemen of the jury, I want to thank you
24 very much for your service and I appreciate and our entire
25 court appreciates your giving up time from your daily

1 activities to participate in our justice system. I'll come in
2 the jury room very shortly to give each of you a personal thank
3 you but so the jury is excused with the thanks of the court.
4 Thank you very much.

5 By the way, sometimes lawyers want to talk to jurors
6 after the verdict, okay? And although you not -- you can't
7 discuss the case with anybody while you're deliberating, now
8 that the case is over you can talk to anybody you want. And if
9 you want to talk to the lawyers about the case, you're welcome
10 to. But you don't have to and if you don't want to, just go on
11 your way down the elevator. And -- because that's completely
12 up to you. The only thing I suggest that if you do want to
13 talk to lawyers about the case that you give them your own
14 personal views and not characterize the deliberations, you
15 know, in any way or point out any specific statements that one
16 juror made or the other. But if you want to talk about your
17 own views, there's certainly no reason you can't do it, but you
18 don't have to do it.

19 All right. Thank you very much. I'll be back there
20 shortly.

21 (The jury exited the courtroom.)

22 THE COURT: All right. The verdict will be recorded
23 and judgment will be entered. And if there's an appeal, then
24 you'll -- you'll have to post a surety bond. All right.
25 Anything further from counsel? Get your exhibits back.

1 MR. COHEN: Yeah.

2 MR. DION: Yeah.

3 THE COURT: All right. Okay.

4 MR. COHEN: I don't have the exhibits, you -- you
5 have them.

6 THE COURT: All right. Court is adjourned. Thank
7 you very much.

8 MR. DION: Okay. Thank you.

9 MR. COHEN: Thank you, Your Honor.

10 (The trial adjourned at 1:14 p.m.)

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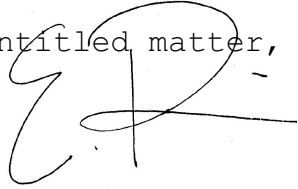
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C E R T I F I C A T I O N

I, Erin Perkins, court approved transcriber, certify that the foregoing 1 to 29 is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

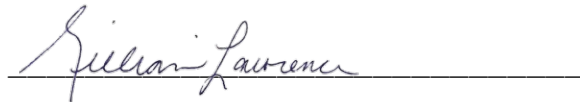


Erin Perkins, CET-601

Date: November 27, 2018

C E R T I F I C A T I O N

I, Gillian Lawrence, court approved transcriber, certify that the foregoing pages 30 to 65 is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.



Gillian Lawrence, CER-255, CET-255

Date: November 27, 2018